

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

IN RE:	:	Case No. 11-30198
STEPHEN M. NAGEL	:	Chapter 7
AMY W. DEAN-NAGEL	:	
Debtors	:	Judge Lawrence S. Walter

**MOTION OF TRUSTEE TO SETTLE AND COMPROMISE COMBINED WITH
NOTICE AND OPPORTUNITY TO OBJECT**

PLEASE READ THIS NOTICE CAREFULLY

You are hereby notified that papers have been filed with the Court requesting an Order pursuant to the above referenced Motion, Application and/or Objection (hereinafter called the "Motion").

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the Motion, or if you want the Court to consider your views on the Motion, **then on or before Twenty-One (21) days after the Date of Issuance set for below**, you or your attorney must file a written response in accordance with the Court's local rules and filing procedures.

The Clerk of Court's address is:

U.S. Bankruptcy Court, Clerk of Courts
120 W. Third Street
Dayton, Ohio 45402.

You must file the response early enough so the Court will receive it on or before the deadline.

You must also provide a copy of your response to Trustee Paul H. Spaeth at 7925 Paragon Road, Suite 101, Dayton, Ohio 45459 or through the Court's ECF system.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: July 11, 2014

Signature: /s/ Paul H. Spaeth
Name: Paul H. Spaeth
Address: 7925 Paragon Rd., Suite 101
Dayton, OH 45459

MOTION

Now comes Trustee Paul H. Spaeth (“the Trustee”) and hereby moves pursuant to Bankruptcy Rule 9019 that the Court approve the settlement and compromise as described in the Memorandum in Support below relating to a personal injury claim of Debtor Stephen M. Nagel, which is property of the estate. The total amount of the settlement is Thirty Thousand Dollars (\$30,000.00), of which the sum of Ten Thousand Dollars (\$10,000.00), a 33.33% contingent fee, is proposed to be paid to Dyer, Garofolo, Mann & Schultz, special counsel to the Trustee, plus such special counsel also will receive expense reimbursement of One Thousand Seven Hundred and Eighty Four Dollars and Sixty Nine Cents (\$1,784.69). In addition, a certain subrogation lien to Anthem is to be paid from the total settlement proceeds in an amount equal to \$3,932.87. After payment of the Trustee’s statutory exemption pursuant to 11 U.S.C. §326 of approximately \$3,750.00 it is anticipated that the net settlement amount to the estate will be approximately \$14,282.44, less any expenses to be reimbursed to the Trustee, which will be known at the time that a final report is filed herein.

No exemption is to be paid to Debtors, pursuant to an Order denying the personal injury exemption sustained on June 14, 2011 (Doc. 33).

A Memorandum in Support is set forth below.

Respectfully submitted,

/s/Paul H. Spaeth

Paul H. Spaeth (0010524)
7925 Paragon Rd., Ste. 101
Dayton, Ohio 45459
(937) 223-1655
Fax: (937) 223-1656
spaethlaw@phslaw.com
Trustee

MEMORANDUM IN SUPPORT

1. Debtors Stephen M. Nagel and Amy M. Dean-Nagel filed this Chapter 7 case on January 18, 2011. Paul H. Spaeth is the duly appointed trustee in the case.

2. Debtor has asserted a claim for personal injuries as a result of an incident occurring on or about October 25, 2009 at a Cincinnati Bengals football game.

3. Pursuant to an Order Approving Application to Employ Special Counsel (Doc. 31) entered on June 10, 2011, the Trustee retained the services of the law firm of Dyer, Garofolo, Mann & Schultz and Ryan Beck Esq. to represent the interests of the estate with respect to such incident.

4. By this Motion, the Trustee seeks the approval of the Court of a settlement and compromise reached with the applicable parties through their insurance carrier for the gross sum of Thirty Thousand Dollars (\$30,000.00).

5. As set forth in the Disbursement Sheet, attached hereto and incorporated herein as Exhibit "A", a total of \$15,717.56 will be disbursed from the gross settlement amount of \$30,000.00 consisting of the following items:

\$10,000.00	Attorney's fees to Special Counsel (33.33% contingent fee)
\$ 1,784.69	Reimbursement of expenses to Special Counsel (itemized in Exhibit "B", attached hereto and incorporated herein)
\$ 3,932.87	Subrogation lien to Anthem
\$15,717.56	Total to be disbursed from gross settlement proceeds

6. It is anticipated that the net settlement amount to be received by the estate will be approximately \$14,282.44, less a statutory commission to Trustee of approximately \$3,750.00 and any expenses to be reimbursed to Trustee, which will be set forth in Final Report.

7. No exemption is proposed to be paid to Debtors, pursuant to an Order denying exemption (Doc. 33) entered on June 14, 2011.

8. The factors for the Court to consider in examining a proposed settlement are: (a) the

probability of success in the litigation; (b) the difficulties, if any, to be encountered in collecting any judgment; (c) the complexity of the litigation involved and the expense, inconvenience and delay necessary attending to it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views with respect to the issues. *Drexel v. Lommis*, 35 F.2d 800, 806 (8th Cir. 1929). In addition, the Court may approve a proposed compromise or settlement after hearing on notice to the creditors pursuant to Bankruptcy Rule 9019(a). In evaluating the proposed settlement, the Court must decide whether the settlement is in the best interest of the estate. *In Re Energy Coop*, 886 F.2d 921 (7th Cir. 1989). The Trustee is of the opinion that, given the costs of litigation, the uncertainty of success if the case were to be tried in state court, the proposed settlement and compromise is clearly in the best interests of creditors and of the estate.

Accordingly, the Trustee respectfully requests that the Court approve the proposed settlement.

Respectfully submitted,

/s/Paul H. Spaeth

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spaethlaw@phslaw.com
Attorney for Trustee

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of July, 2014, a copy of the foregoing Motion of Trustee to Settle and Compromise was electronically served on the following registered ECF participants, electronically through the Court's transmission facilities at their email addresses registered with the Court as set forth below and by ordinary United States mail as indicated below:

Office of the United States Trustee
170 North High Street, Suite 200
Columbus, OH 43215-2417
ustpregion09.cb.ecf@usdoj.gov

Jeffrey P. Albert, Esq.
4403 N. Main St.
Dayton, Ohio 45405-5016
albertkrochmalecf@earthlink.net

and that the following persons were mailed a copy by ordinary U.S. Mail addressed to:

Stephen M. Nagel
172 Walnut Grove Drive
Centerville, Ohio 45458

Bank Of America
PO Box 17054
Wilmington, DE 19850

Amy Dean-Nagel
716 Maidstone Court
Centerville, Ohio 45458

Capital One
P O Box 30285
Salt Lake City, UT 84130-0285

Kathleen A. Cole, Esq.
Smith, Rolfes & Skavdahl Company, LPA
600 Vine Street, Suite 2600
Cincinnati, Ohio 45202

Chase
N54 W 13600 Woodale Dr
Menomonee, WI 53051

Ryan C. Beck, Esq.
Dyer, Garofalo, Mann & Schultz
Talbot Tower, Suite 1400
131 North Ludlow Street
Dayton, Ohio 45402

Chase
PO Box 15298
Wilmington, DE 19850

Anthem UM Services, Inc.
c/o Lawrence & Russell
5178 Wheelis Dr.
Memphis, TN 38117

Chase Manhattan Mortgage
Attention: Research Dept. G7-PP
3415 Vision Drive
Columbus, OH 43219

Orthopaedic Inst. of Dayton
3205 Woodman Dr.
Dayton, Ohio 45420-1143

Chase- Bp
225 Chastain Meadows Court
Kennesaw, GA 30144

Springboro Counseling
550 N. Main St., Ste. B
Springboro, Ohio 45066

Credit First
PO Box 818011
Cleveland, OH 44181

Am-eagle/mccbg/GEMB
Attention: Bankruptcy
PO Box 103104
Roswell, GA 30076

Gemb
PO Box 981400
El Paso, TX 79998

American Express
c/o Becket and Lee LLP
PO Box 3001
Malvern, PA 19355

Hsbc Best Buy
Attn: Bankruptcy
PO Box 5263
Carol Stream, IL 60197

American Honda Finance
Attn: Bankruptcy
3625 West Royal Lane Suite 200
Irving, TX 75063

Hsbc/elder
Hsbc Retail Services Attention: Bankru
PO Box 5263
Carol Stream, IL 60197

Jareds
375 Ghent Rd
Akron, OH 44333

Kohls
Attn: Recovery Dept
PO Box 3120
Milwaukee, WI 53201

Lane Bryant Retail/soa
PO Box 182789
Columbus, OH 43213

Macys/fdsb
Attn: Bankruptcy
PO Box 8053
Mason, OH 45040

Patricia A. Dean
10280 Atchison Road
Dayton, OH 45458

PNC Bank
Attn: Bankruptcy
2730 Liberty Ave
Pittsburgh, PA 15222

Sams Club
Attention: Bankruptcy Department
PO Box 105968
Atlanta, GA 30353

Sears/cbsd
8725 W. Sahara Ave
The Lakes, NV 89163

Sears/cbsd
PO Box 6189
Sioux Falls, SD 57117

Von Maur
Attn: Credit Dept
6565 Brady
Davenport, IA 52806

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Columbus, OH 43213

Wright Patterson Crdt
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Fairborn, OH 45324

HSBC Bank Nevada, NA
Bass & Associates P.C.
3936 E. Ft. Lowell Road, Suite #200
Tucson, AZ 85712

/s/ Paul H. Spaeth
Paul H. Spaeth